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8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **887-A**

11 **LEO AVALOS AGUILERA**
12 **20644 Oleander Avenue**
13 **Perris, CA 92320**
Civil Engineer License No. C 31397

A C C U S A T I O N

14 Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
19 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
20 Department of Consumer Affairs.

21 2. On or about August 14, 1980, the Board for Professional Engineers and Land
22 Surveyors issued Civil Engineer License Number C 31397 to Leo Avalos Aguilera (Respondent).
23 The Civil Engineer License was in full force and effect at all times relevant to the charges brought
24 herein and will expire on December 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board for Professional Engineers and Land
27 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.
28 All section references are to the Business and Professions Code unless otherwise indicated.

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2 4. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove,
3 suspend for a period not to exceed two years, or revoke the certificate of any professional
4 engineer registered under this chapter:

5 "(a) Who has been convicted of a crime substantially related to the qualifications, functions
6 and duties of a registered professional engineer, in which case the certified record of conviction
7 shall be conclusive evidence thereof.

8 "(b) Who has been found guilty by the board of any deceit, misrepresentation, or fraud in
9 his or her practice.

10 "(c) Who has been found guilty by the board of negligence or incompetence in his or her
11 practice.

12 "(d) Who has been found guilty by the board of any breach or violation of a contract to
13 provide professional engineering services.

14 "(e) Who has been found guilty of any fraud or deceit in obtaining his or her certificate.

15 "(f) Who aids or abets any person in the violation of any provision of this chapter.

16 "(g) Who in the course of the practice of professional engineering has been found guilty by
17 the board of having violated a rule or regulation of unprofessional conduct adopted by the board.

18 "(h) Who violates any provision of this chapter."

19 5. Section 6749 of the Code states:

20 (a) A professional engineer shall use a written contract when contracting to provide
21 professional engineering services to a client pursuant to this chapter. The written contract shall
22 be executed by the professional engineer and the client, or his or her representative, prior to the
23 professional engineer commencing work, unless the client knowingly states in writing that work
24 may be commenced before the contract is executed . The written contract shall include, but not
25 be limited to, all of the following:

26 (1) A description of the services to be provided to the client by the professional engineer.

27 (2) A description of any basis of compensation applicable to the contract, and the method of
28 payment agreed upon by the parties.

(3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client.

(4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.

(5) A description of the procedure to be used by any party to terminate the contract.

(b) This section shall not apply to any of the following:

(1) Professional engineering services rendered by a professional engineer for which the client will not pay compensation.

(2) A professional engineer who has a current or prior contractual relationship with the client to provide engineering services, and that client has paid the professional engineer all of the fees that are due under the contract.

(3) If the client knowingly states in writing after full disclosure of this section that a contract which complies with the requirements of this section is not required.

(4) Professional engineering services rendered by a professional engineer to any of the following:

(A) A professional engineer licensed or registered under this chapter.

(B) A land surveyor licensed under Chapter 15 (commencing with Section 8700).

(C) An architect licensed under Chapter 3 (commencing with Section 5500).

(D) A contractor licensed under Chapter 9 (commencing with Section 7000).

(E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section 7800).

(F) A manufacturing, mining, public utility, research and development, or other industrial corporation, if the services are provided in connection with or incidental to the products, systems, or services of that corporation or its affiliates.

(G) A public agency.

(c) "Written contract" as used in this section includes a contract that is in electronic form.

1 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
2 administrative law judge to direct a licensee found to have committed a violation or violations of
3 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
4 enforcement of the case.

5 7. Section 118, subdivision (b) of the Code states:

6 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
7 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
8 order of a court of law, or its surrender without the written consent of the board, shall not, during
9 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
10 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
11 provided by law or to enter an order suspending or revoking the license or otherwise taking
12 disciplinary action against the licensee on any such ground.

13 "(c) As used in this section, 'board' includes an individual who is authorized by any
14 provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'
15 'registration,' and 'permit.'"

16 LOLA PROJECT

17 8. In or around January, 2004, Respondent entered into a contract to prepare plans to
18 connect a property, located at 16035 Chestnut Street, Hesperia, California, to the sewer main.
19 The new public sewer main shown on Respondent's civil engineering design plans could not be
20 constructed due to errors on the plans. Instead surveying the actual elevations of the sewer main,
21 street surface, and finished floor elevation of the residence, Respondent incorrectly assumed
22 information shown on other plans was accurate. Had the sewer main been fully constructed in
23 accordance with Respondent's plans, the sewer main would have protruded above ground level
24 instead of being sufficiently below ground. When confronted by project owner Oscar Lola (Lola)
25 regarding the incorrect elevations, Respondent conceded that he did not survey the area but rather
26 used as-built plans prepared by the City. As a result of Respondent's conduct, Lola incurred
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substantial additional costs on the project.

FIRST CAUSE FOR DISCIPLINE

(Negligence)

9. Complainant refers to and incorporates the allegations contained in paragraph 8, as though set forth fully. Respondent is subject to disciplinary action under section 6775 subdivision (c) in that he committed negligence during the course of providing engineering services on the Lola Project by failing to send surveyors to the project site to obtain the actual topography of the existing sewer main, Chestnut Street, and the house that was under construction.

SECOND CAUSE FOR DISCIPLINE

(Improper Written Contract)

10. Complainant refers to and incorporates the allegations contained in paragraph 8, as though set forth fully. Respondent is subject to disciplinary action under section 6775, subdivision (h), in that he entered into a contract that failed to include all of the information required by section 6749.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Civil Engineer License Number C 31397, issued to Leo Avalos Aguilera.

2. Ordering Leo Avalos Aguilera to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED:

5/3/10

Original Signed

DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

Complainant

LA2009604780

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